

Application No.: 10/727118

Docket No.: CDPC-P01-003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: 10-4-04

Signature:

*Maura A. Gallagher*  
(Maura A. Gallagher)

Docket No.: CDPC-P01-003  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Jeffrey J. Fitzgerald

Application No.: 10/727118

Confirmation No.: 4402

Filed: December 2, 2003

Art Unit: 2661

For: ETHERNET NETWORK AVAILABILITY

Examiner: Not Yet Assigned

**PETITION UNDER 37 CFR 1.47(B) AND STATEMENT  
OF FACTS IN SUPPORT OF THE PETITION**

MS Missing Parts  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

1. Mr. Jeffrey J. Fitzgerald participated in the conception of the subject matter disclosed in US provisional patent Application Serial No. 60/430720 filed December 3, 2002, to which the above-referenced US Application Serial No. 10/727118 filed December 2, 2003 (the "Application") claims priority.

2. To the best of my knowledge, Mr. Jeffrey J. Fitzgerald is a sole inventor of the Application.

3. Mr. Fitzgerald's last known mailing address is:

3 Tanglewood Drive  
Amherst, NH03031

4. On January 16, 2004, ROPES & GRAY LLP mailed a copy of the application as filed, along with a Declaration for Mr. Fitzgerald's signature directly to Mr. Fitzgerald at Cedar Point Communications, Inc.

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5. On April 14, 2004, ROPES & GRAY LLP mailed a Declaration for Mr. English's signature, to Mr. Geoff Devine, Vice President, Systems Engineering at Cedar Point Communications, Inc.

6. On June 17, 2004, ROPES & GRAY LLP emailed a Declaration to Mr. Devine requesting that the signed declaration be returned by July 4, 2004 indicating that we were currently in the second extension.

7. As of October 4, 2004, Mr. Fitzgerald has failed to sign the Declaration and provide the same to ROPES & GRAY LLP.

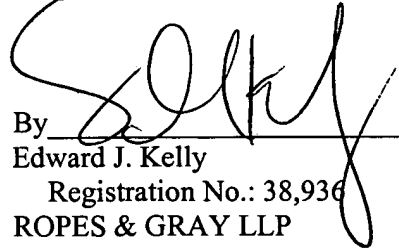
8. Mr. Fitzgerald's failure to sign the Declaration, after numerous requests, constitutes a refusal to sign which will result in irreparable damage to Cedar Point Communications, Inc. in that the Application will become abandoned unless the Petition under 37 CFR 1.47(b) is granted. Such abandonment could result in the loss of U.S. proprietary rights in and to the technology embraced by the Application.

9. An unexecuted Declaration is enclosed herewith.

The petition fee of \$130 under 37 CFR 1.17(h) is enclosed herewith. If additional fees are due with this response, please charge our Deposit Account No. 18-1945, under Order No. CDPC-P01-003 from which the undersigned is authorized to draw.

Dated: October 4, 2004

Respectfully submitted,



By  
Edward J. Kelly

Registration No.: 38,936  
ROPES & GRAY LLP  
One International Place  
Boston, Massachusetts 02110-2624  
(617) 951-7000  
(617) 951-7050 (Fax)  
Attorneys/Agents For Applicant



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

DECLARATION FOR PATENT APPLICATION

As the below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

IMPROVING ETHERNET NETWORK AVAILABILITY

the specification of which was filed on December 2, 2003 as Application No. 10/727118.

In the event that the filing date and/or Application No. are not entered above at the time I execute this document, and if such information is deemed necessary, I hereby authorize and request my attorneys/agent(s) at **Ropes & Gray LLP**, One International Place, Boston, Massachusetts 02110-2624, to insert above the filing date and/or Application No. of said application.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by an amendment, if any, specifically referred to herein.

I acknowledge the duty to disclose all information known to me that is material to patentability in accordance with Title 37, Code of Federal Regulations, § 1.56.

FOREIGN PRIORITY CLAIM

I hereby claim foreign priority benefits under Title 35, United States Code § 119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

☒ no such foreign applications have been filed

☐ such foreign application have been filed as follows:

**EARLIEST FOREIGN APPLICATION(S), IF ANY FILED WITHIN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

Application Number	Country	Date of Filing	Priority Claimed Under 35 USC 119
			___ Yes No ___
			___ Yes No ___
			___ Yes No ___

**ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

Application Number	Country	Date of Filing

**CLAIM FOR BENEFIT OF EARLIER U.S. PROVISIONAL APPLICATIONS**

I hereby claim priority benefits under Title 35, United States Code §119(e), of any United States provisional patent application(s) listed below:

☐ no such U.S. provisional applications have been filed.

☒ such U.S. provisional application have been filed as follows:

Application Number	Date of Filing	Priority Claimed Under 35 USC 119
60/430,720	December 3, 2002	<u>  x  </u> Yes No ___
		___ Yes No ___
		___ Yes No ___

**CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S)**

I hereby claim the benefit under Title 35, United States Code, §120 of the United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all information that is material to patentability in accordance with Title 37, Code of Federal Regulations, §1.56 which became available to me between the filing date of the prior application and the national or PCT international filing date of this application:

☒ no such U.S./PCT applications have been filed.

☐ such U.S./PCT application have been filed as follows:

Application Number	Relationship	Parent Application	Date of Filing

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereby appoint:

All practitioners at Customer Number 28120

all of **Ropes & Gray LLP**, One International Place, Boston, Massachusetts 02110-2624, jointly, and each of them severally, my attorneys at law/patent agent(s), with full power of substitution, delegation and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the U. S. Patent and Trademark Office connected therewith.

Please mail all correspondence to Edward J. Kelly, whose address is:

**Ropes & Gray LLP**  
One International Place  
Boston, Massachusetts 02110-2624

Please direct telephone calls to: Edward J. Kelly at (617) 951-7532.

Please direct facsimiles to: (617) 951-7050

Full name of sole or first inventor <b>Jeffrey J. Fitzgerald</b>	
Sole or first inventor's signature	Date
Residence <b>Amherst, New Hampshire</b>	
Citizenship <b>US</b>	
Mailing Address  <b>3 Tanglewood Way Amherst, New Hampshire 03031</b>	

Full name of second inventor, if any	
Second inventor's signature	Date
Residence	
Citizenship	
Mailing Address	

Full name of third inventor, if any	
Third inventor's signature	Date
Residence	
Citizenship	
Mailing Address	

Full name of fourth inventor, if any	
Fourth inventor's signature	Date
Residence	
Citizenship	
Mailing Address	